

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 16-287V

Filed: November 21, 2016

UNPUBLISHED

NINA KLEINBERG,

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Petitioner,

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v.

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SECRETARY OF HEALTH
AND HUMAN SERVICES,

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Attorneys' Fees and Costs;
Unopposed by Respondent;
Hourly Rate.

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Respondent.

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Howard Gold, Gold Law Firm, LLC, Wellesley Hills, MA, for petitioner.

Lara Englund, U.S. Department of Justice, Washington, DC, for respondent.

DECISION ON ATTORNEYS' FEES AND COSTS¹

Roth, Special Master:

On March 1, 2016, Nina Kleinberg ("Ms. Kleinberg" or "petitioner") filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,² (the "Vaccine Act"). Petitioner alleged that she suffered transverse myelitis after receiving an influenza vaccination on or about October 16, 2014. *See generally* Petition ("Pet."), ECF No. 1. Respondent denies that the influenza vaccine caused petitioner's alleged injury. *See* Stipulation at ¶ 6. Nevertheless, the parties agreed to settle this case. Respondent filed a stipulation of settlement on November 10, 2016. Stipulation, ECF No. 17. Accordingly, on

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all "§" references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

November 10, 2016, the undersigned issued a decision approving the settlement. Decision, ECF No. 18.

Petitioner now seeks an award of attorney's fees in the amount of \$15,414.25 and costs in the amount of \$720.31, for a total of \$16,134.56, pursuant to Section 15(e) of the Vaccine Act. Motion for Attorney's Fees ("Motion for Fees"), ECF No. 22, at 1. In accordance with General Order #9, petitioner's counsel has represented that petitioner did not incur any out of pocket expenses. *Id.* Respondent has confirmed that she does not oppose petitioner's application for fees and costs. After careful consideration, the undersigned has determined to grant the request in part for the reasons set forth below.

The Vaccine Act permits an award of reasonable attorneys' fees and costs. § 15(e). The undersigned has previously awarded Mr. Gold hourly rates of \$370 for work performed in 2016 and \$360 for work performed in 2015. *See Karl v. Sec'y of HHS*, No. 14-36V, 2016 WL 6069200 (Fed. Cl. Spec. Mstr. Sept. 20, 2016). In the instant application, however, Mr. Gold has requested an hourly rate of \$370 for work performed in both 2016 and 2015. The undersigned declines to award Mr. Gold an hourly rate of \$370 for work performed in 2015, as she has already determined that his appropriate rate for 2015 is \$360. Mr. Gold's fees are hereby **reduced by \$73**. Mr. Gold's costs seem reasonable and will be granted in full.

Accordingly, the undersigned awards the total of \$16,061.56³ as a lump sum in the form of a check jointly payable to petitioner and petitioner's counsel, Howard Gold.

The clerk of the court shall enter judgment in accordance herewith.⁴

IT IS SO ORDERED.

s/Mindy Michaels Roth
Mindy Michaels Roth
Special Master

³ This amount is intended to cover all legal expenses incurred in this matter. This award encompasses all charges by the attorney against a client, "advanced costs" as well as fees for legal services rendered. Furthermore, § 15(e)(3) prevents an attorney from charging or collecting fees (including costs) that would be in addition to the amount awarded herein. *See generally Beck v. Sec'y of Health & Human Servs.*, 924 F.2d 1029 (Fed. Cir.1991).

⁴ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.